# UNNUMBERED LETTERS ISSUED FOR THE MONTH OF MARCH2009

Dated	Subject	Distribution
03/04/09	Guidance on Extension of the Conditional Commitment Section 538 Guaranteed Rural Rental Housing Program	S/D
03/04/09	Fiscal Year 2007 Management Control Review of the Section 514 On-Farm Labor Housing-Loan Servicing	S/D
03/4/09	Freedom of Information Act Requests Related to the American Recovery and Reinvestment Act of 2009	S/D
03/06/09	Employee Responsibilities and Conduct	S/D
03/06/09	Mid-Year Performance Review	RD Employees
03/10/09	Reminder for Mid-Year Performance Reviews Response Due: May 1, 2009	S/D
03/13/09	Repair Financed with Protective Advances	S/D
3/17/09	Change of Official Station Regulations and Relocations	N.O.O. & S/D
3/20/09	Prior Disbursements for 504 Grants	S/D

TO: State Directors Rural Development

FROM: James C. Alsop (Signed by James C. Alsop)

Acting Administrator Rural Housing Service

SUBJECT: Guidance on Extension of the Conditional Commitment

Section 538 Guaranteed Rural Rental Housing Program

The purpose of this unnumbered letter is to outline the process to follow when it is necessary to extend a conditional commitment beyond 24 months.

7 CFR part 3565, Section 3565.303 (b) states that, "...The Agency will issue a conditional commitment to guarantee a loan. This commitment will be good for such time frame as the Agency deems appropriate based on project requirements." Handbook-1-3565, Chapter 4, Section 4.15, identifies the timeframe as not to exceed 24 months. The section further explains that if a loan guarantee is not issued within the period specified in the commitment letter, the commitment will automatically expire.

On a case-by-case basis and after a thorough due diligence, the State Director may grant an extension to a loan commitment period for a project deemed to remain viable. If it is in the Government's best interest, the State Director may extend a conditional commitment up to 12 months beyond the initial 24-month period (the total cumulative commitment period may not exceed 36 months). The extension must be requested by the lender prior to the expiration of the conditional commitment. The request must include a written justification for the extension and a certification from the lender that the failure to fulfill the conditions for the issuance of a permanent guarantee within the commitment period was beyond the control of the borrower [and the lender], and that those conditions can be fulfilled within the extension period. The lender must also certify that all application documents have been updated and are current, including but not limited to the initial credit and financial underwriting of the borrower and the project. Any changes or updates to the application documents must be submitted to the State Office for its review and approval prior to the issuance of a commitment extension. The lender will also be charged a flat fee of \$500 for each extension that is granted.

EXPIRATION DATE: February 28, 2010

FILING INSTRUCTIONS Housing Programs If an extension beyond a cumulative 36-month period is requested and deemed warranted by the State Director, the extension request must be submitted to the National Office to the Director, Multi-Family Housing Guaranteed Loan Division, for review and concurrence. All supporting documentation must be submitted to the National Office along with the State Director's extension approval recommendation.

Please note that in cases where the Government has committed to issue a guarantee to cover construction loan advances and a guarantee to cover the permanent financing, the commitment extensions referred to herein cannot to be used as a conduit to extend the construction guarantee period beyond the regulatory maximum of 24 months. The purpose of these conditional commitment extensions **is not** to extend the guarantee period for construction advances, but rather to extend the Government's commitment to issue a permanent guarantee once the conditions for a permanent guarantee have been met.

For additional information, please contact Tammy S. Daniels, Financial and Loan Analyst, (202) 720-0021.

TO: State Directors

ATTN: Multi-Family Housing Program Directors

FROM: James C. Alsop (Signed by James C. Alsop)

**Acting Administrator** 

Housing and Community Facilities Programs

SUBJECT: Fiscal Year 2007 Management Control Review of the

Section 514 On-Farm Labor Housing- Loan Servicing

The purpose of this memorandum is to address the concerns raised as a result of the FY 2007 Management Control Review for the Section 514 On-Farm Labor Housing Loan Program. As a result of the Management Control Review (MCR) there were several internal program weaknesses which need to be addressed.

- 1. The National Office noted during the file review of the Section 514 On-Farm Labor Housing program that the Servicing files did not contain Management Plans. In accordance with 7 CFR 3560 Subpart M; Section 3560.623 (a) Housing Management and Operations, the Agency regulation states it is the responsibility of the borrower to provide to the Agency a Management Plan. At a minimum, the Management Plan should detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed. Rural Development Servicing Officials are to review all documentation submitted with the Management Plan to ensure the plans meet Agency requirements.
- 2. The National Office noted during the file docket review that many of the files did not contain Form RD 3560-7A, "On Farm Labor Housing Project Budget" as required by the Agency. In accordance with 7 CFR 3560 Subpart M; Section 3560.630 Financial Management, it is the responsibility of the borrower to provide the Agency financial information showing the borrower is operating the housing in a non-profit manner.
- 3. The National Office noted during the file review and the site visits that several borrowers did not have an executed lease agreement or an employment contract with the farm labor worker. In accordance with 7 CFR 3560 Subpart M; Section 3560.623 (b) Housing Management and Operations, it is the responsibility of the borrower to maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy. During the Supervisory visit, the Servicing Official should be reviewing that a lease agreement or an employment contract is in place.

EXPIRATION DATE: February 28, 2010

FILING INSTRUCTIONS: Housing Programs

- 4. The National Office noted during the site visit there were units being occupied by persons not engaged in primary production of agricultural commodities. The regulation stipulates that farm labor occupants must meet the definition of a domestic farm laborer, as defined in 7 CFR 3560; Section 3560.11. However, 7 CFR 3560, Subpart M, 3560.624 (d) allows with prior written permission of the Agency, an On-FLH may be occupied by ineligible tenants on a short-term basis.
- 5. During the site visits, it was noted that in some cases deferred maintenance of the housing exist. It remains essential that borrowers continue to maintain properties in an acceptable condition as required by the Agency regulation, 7 CFR 3560, Section 3560.625 Maintaining the Physical Asset, along with meeting state and local building and occupancy codes. In cases where the borrower is not making necessary repairs, the Servicing Official should take the necessary servicing actions in accordance with 7 CFR 3560, Subpart J, "Special Servicing, Enforcement, Liquidation and Other Actions."
- 6. HB-2-3560 and HB-3-3560 provide guidance for Servicing Officials in the administration, management and monitoring of On-Farm Labor Housing loans. A substantial part of the guidance is devoted to maintaining the Multi-Family Information System database (MFIS). It was noted that the database continues to not be maintained or updated promptly. Servicing Officials were not properly or timely entering such specific items as management plans, budgets, inspections, and follow-up on noted deficiencies. A three-part MFIS training PowerPoint is available on the Rural Development Multi-Family (MFH) Share point website at: <a href="https://rd.sc.egov.usda.gov/teamrd/hcfp/mfh/MultiHousing%20Family%20Information/Forms/AllItems.aspx">https://rd.sc.egov.usda.gov/teamrd/hcfp/mfh/MultiHousing%20Family%20Information/Forms/AllItems.aspx</a>. Servicing Officials are strongly encouraged to view this PowerPoint and ensure that loan specialists charged with monitoring properties and enforcing Agency regulations also view the PowerPoint.

MFIS is the Agency's main source of data on the Multi-Family Housing portfolio. Accurate and timely information is critical to appropriate monitoring and enforcement of Agency regulations to ensure continued availability of decent, safe and sanitary affordable housing for rural residents. This data is used to develop National Office Performance and Accountability Reports, Program Assessment Reports, and to determine achievement of goals in the Rural Development Strategic Plan.

To assist you in educating borrowers and management agents in some of the Agency's requirements related to issues listed in this memo, the Agency has prepared the attached Guide Letter, which will be mailed directly to all On-Farm Labor Housing borrowers.

If you have any questions regarding this memo, please contact the Multi-Family Housing Portfolio Management Division.

Attachment

(c) Third priority is to be given to retired domestic farm laborer households and disabled domestic farm laborer households who were not active in the local farm labor market at the time of retiring or becoming disabled. Occupancy priority will be given in accordance with paragraph (a) of this section.

# §3560.578 Financial management of labor housing.

The requirements established in subpart G of this part will apply to all off-farm labor housing.

# §3560.579 Servicing off-farm labor housing.

The requirements established in subparts I and J of this part will apply to all off-farm labor housing. Servicing according to subparts I and J of this part shall apply throughout the term of the loan or grant, whichever is longer.

§§3560.580-3560.599 [Reserved]

### §3560.600 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

### Subpart M--On-Farm Labor Housing

### §3560.601 General.

This subpart contains the requirements for making loans for on-farm labor housing and for ongoing operation and management of on-farm labor housing. Unless otherwise specified in this subpart, the requirements of subparts A through K, N, O, and P of this part will apply in addition to requirements given in this subpart.

# §3560.602 Program objectives.

In addition to the objectives stated in §3560.52, on-farm labor housing funds will be used to increase:

- (a) The supply of affordable housing for farm labor; and
- (b) The ability of the farmer to provide affordable, decent, safe and sanitary housing for farm workers.

# §3560.603 Loan purposes.

On-farm labor housing loans may be made only for the purposes established in §3560.553. Grants are not available for on-farm labor housing.

#### §3560.604 Restrictions on use of funds.

On-farm labor housing loans may not be used for any purpose prohibited by §3560.54 except §3560.54(a)(1). On-farm labor housing may be used to serve migrant workers. In addition, on-farm labor housing loan funds may not be used to provide housing for members of the immediate family of the applicant when the applicant is an individual farm owner, family farm corporation, family farm partnership, or a member of an association of farmers. Immediate family includes mother, father, brothers, sisters, sons, and daughters of the applicant and spouse.

### §3560.605 Eligibility requirements.

- (a) To be eligible for an on-farm labor housing loan, the applicant must meet the requirements of §3560.55(a) with the exception of §3560.55(a)(1), (5), and (6) and the following requirements.
  - (1) The applicant must be a farm owner, family farm partnership, family farm corporation, or an association of farmers engaged in agricultural or aquacultural farming operations whose farming operations demonstrate a need for on-farm labor housing and who will own the housing and operate it on a nonprofit basis.
  - (2) The applicant must agree to use the labor housing to engage in the farming operations of the individual farm owner applicant, or in the farming operations of its members if it is a family farm corporation or partnership, or an association of farmers.
  - (3) The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions which the applicant could reasonably be expected to fulfill. If the applicant is an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.
- (b) The Agency may make an exception to the requirement that an individual farm owner, family farm corporation, family farm partnership or an association of farmers be unable to obtain the necessary credit elsewhere when all of the following conditions exist:
  - (1) There is a housing need in the area for domestic farmworkers who are migrants and the applicant will provide such housing; and
  - (2) There are no qualified state or political subdivisions or public or private nonprofit organizations available, or likely to become available within 12 months of the application, that are willing and able to provide the housing.
- (c) When an applicant is determined eligible under paragraph (b) of this section, the interest rate for such loans will be determined in accordance with 7 CFR part 1810, subpart A.

(d) On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that five percent of the units be constructed as fully accessible units, as described in §3560.60(d).

# §3560.606 Application requirements and processing.

- (a) On-farm labor housing loan applications will be processed according to 7 CFR part 1940, subpart L. Applicants must submit an application in an Agency-approved format that adequately documents the need for the housing and the eligibility of the applicant.
- (b) The applicant must certify that the farm workers for which the housing is intended are or will be involved in the applicant's agricultural or aquacultural farming operations.
- (c) The applicant must certify that housing operations will be conducted in a non-profit manner such that income from the housing does not exceed eligible expenses associated with the housing. Eligible expenditures for the housing include, but are not limited to housing repairs and upkeep, payment of installments on the loan, taxes, insurance and reserves and other essential uses needed for success of the operations.

# §3560.607 [Reserved]

# §3560.608 Site and construction requirements.

- (a) <u>General</u>. Cost and development standards for on-farm labor housing will be consistent with the requirements, standards, and cost limits specified in subpart B of this part, if the housing is a multi-family housing type structure, or consistent with section 502 of the Housing Act of 1949, if the housing is a single family type structure.
- (b) <u>Permanent units</u>. On-farm labor housing occupied for 8 months or more of the year will be required to meet the following requirements.
  - (1) Housing may be multi-family or single family in type and may be located on the farm away from farm service buildings, or in the nearby community. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. All sites and housing shall be planned and constructed in accordance with 7 CFR part 1924, subparts A and C.
  - (2) Sites must be accessible from a public road, when feasible.
- (c) <u>Seasonal units</u>. On-farm labor housing occupied for less than 8 months of the year will be considered seasonal housing. Such housing must meet the following requirements.
  - (1) Housing designed for seasonal occupancy may be either single family or multi-family.
  - (2) Seasonal housing may be constructed in accordance with exhibit I of 7 CFR part 1924, subpart A. If constructed in accordance with exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.

(d) <u>Accessibility</u>. On-farm labor housing that consists of buildings with less than three units, need not meet the requirement that five percent of the units be constructed as fully accessible units, as described in §3560.60(d). This does not, however, eliminate any other accessibility requirements.

§3560.609 [Reserved]

# §3560.610 Security.

- (a) Security instruments must meet the requirements established under §3560.560.
- (b) When feasible, the on-farm labor housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must include a lien on the tract of land where the on-farm labor housing is located and the security must have adequate value to protect the Federal government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal government's interests are adequately secured.
- (c) The Agency will determine the value of the security for the loan in accordance with 7 CFR part 1922, subpart B if the farm is used as security or in accordance with section 502 of the Housing Act of 1949, if only the on-farm labor housing and related land is used for security.
- (d) If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.
- (e) Personal liability and recourse will be required of all borrowers, including the individual members, stockholders or partners of an association of farmers, family farm corporations or partnerships, respectively.

#### §3560.611 Technical, legal, insurance and other services.

When technical, legal, insurance, or services are required for development of on-farm labor housing, applicants must comply with the applicable requirements of §3560.62. Regarding insurance coverage, the requirements of §3560.62(d) apply to on-farm labor housing.

### §3560.612 Loan limits.

The maximum loan amount will be 100 percent of the allowable total development costs of on-farm labor housing and related facilities subject to §§3560.603, 3560.604 and 3560.608.

§3560.613 [Reserved]

### §3560.614 Reserve accounts.

When on-farm labor housing operations include 12 or more units, the Agency will require such properties to comply with the reserve account requirements in §3560.65.

### §3560.615 Participation with other funding sources.

The Agency encourages the use of other funding sources in conjunction with on-farm labor housing loans. Use of such financing in conjunction with an on-farm labor housing loan is subject to the approval of the Agency and must comply with the requirements of §3560.66.

# §3560.616 Rates and terms.

- (a) The interest rate for on-farm labor housing loans will be 1 percent.
- (b) The term of the on-farm labor housing loan will not exceed 33 years.
- (c) Loan amortization for on-farm labor housing may be on a monthly or an annual basis.

# §3560.617 [Reserved]

# §3560.618 Supplemental requirements for on-farm labor housing.

The management plan for on-farm labor housing operated on a seasonal basis must have specific opening and closing dates. During the off-season, on-farm labor housing may be used under short-term lease provisions.

# §3560.619 Supplemental requirements for manufactured housing.

On-farm labor housing loan funds used for manufactured housing must comply with §3560.70. Manufactured housing located on-farm may consist of individual units.

# §3560.620 Construction financing.

The requirements established in §3560.71 apply to all applications involving on-farm labor housing loans.

# §3560.621 Loan closing.

Applicants for on-farm labor housing loans must execute an Agency-approved loan agreement. In addition, if determined appropriate by the Agency, on-farm labor housing loans made on or after the effective date of this regulation may be subject to the restrictive-use provisions as stated in §3560.72(a)(2)(ii). All other on-farm labor housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in subpart N of this regulation.

### §3560.622 Subsequent loans.

The requirements established in §3560.572 apply to all applications for on-farm labor housing subsequent loans.

# §3560.623 Housing management and operations.

Borrowers with on-farm labor housing loans must:

- (a) Develop and submit to the Agency a management plan in a format specified by the Agency. At a minimum, the management plan will detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed; and
- (b) Maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.

# §3560.624 Occupancy restrictions.

- (a) The immediate relatives of the borrowers are ineligible occupants for on-farm labor housing.
- (b) Occupants must meet the definition of a domestic farm laborer, as defined in §3560.11.
- (c) Occupancy of on-farm labor housing is restricted to employees of the borrower unless otherwise approved by the Agency.
- (d) With prior written permission of the Agency, on-farm labor housing may be occupied by ineligible tenants on a short-term basis. The permission of the Agency must also be for a limited duration.

# §3560.625 Maintaining the physical asset.

On-farm labor housing must meet state and local building and occupancy codes.

# §3560.626 Affirmative Fair Housing Marketing Plan.

On-farm labor housing must meet the requirements of §3560.104.

# §3560.627 Response to resident complaints.

The management plan submitted in accordance with §3560.623 (a) will include a provision for dealing with resident complaints.

### §3560.628 Establishing and modifying rental charges.

If it becomes necessary to establish or modify a shelter cost, the borrower must obtain Agency approval as specified in subpart E of this part.

# §3560.629 Security deposits.

Borrowers that require security deposits to be paid by the tenants will be required to comply with the requirements of §3560.204.

# §3560.630 Financial management.

Financial information must be submitted in an Agency-approved format and will show operation of the housing in a nonprofit manner.

# §3560.631 Agency monitoring.

A compliance review and physical inspection will be conducted by the Agency at least once every 3 years. The purpose of this review will be to inspect:

- (a) Tenant eligibility documentation;
- (b) Financial information on the operation and management of the labor housing, including relevant borrower financial materials;
- (c) Payment of taxes, insurance and hazard insurance;

- (d) Compliance with the security deposit requirements;
- (e) Compliance with the operating plan;
- (f) Compliance with the loan agreement;
- (g) Compliance with Agency requirements for affordable, decent, safe, and sanitary housing; and
- (h) Compliance with civil rights requirements.

§3560.632-3560.649 [Reserved]

§3560.650 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart N--Housing Preservation

### §3560.651 General.

- (a) This subpart contains the Agency's housing preservation requirements as related to prepayment requests and restrictive-use provisions (RUPs). The requirements of this subpart support the Agency's commitment to the preservation of decent, safe, sanitary, and affordable multi-family housing (MFH) for very low-, low-, and moderate-income households.
- (b) The Agency will coordinate, direct, and monitor the Agency's MFH preservation activities from the National Office level.

# §3560.652 Prepayment and restrictive-use categories.

- (a) Loans with prepayment prohibitions include:
  - (1) Initial Section 515 loans made on or after December 15, 1989, and
  - (2) Subsequent loans made on or after December 15, 1989, for additional rental units.

TO: Section 514 - On Farm Labor Housing Borrowers

SUBJECT: National Office Internal Review Findings

Rural Development's National Office conducted an internal review of the Section 514 – On Farm Labor Housing Program. The purpose of the review was to determine if regulatory requirements and administrative procedures for loan servicing are properly implemented and administered. As a result of the review, the National Office discovered several weaknesses and deficiencies.

- 1. It was noted during the file review only 32 percent of the files reviewed had Management Plans submitted. In accordance with 7 CFR 3560 Subpart M; Section 3560.623 (a) Housing Management and Operations, the Agency regulation states it is the responsibility of the borrower to provide to the Agency a Management Plan. At a minimum, the management plan should detail the borrower's operational and occupancy policies, how the borrower will deal with resident complaints, and how repairs will be completed.
- 2. The National Office noted during the file docket review that many of the files did not contain Form RD 3560-7A, "On Farm Labor Housing Project Budget" as required by the Agency. In accordance with 7 CFR 3560 Subpart M; Section 3560.630 Financial Management, it is the responsibility of the borrower to provide the Agency financial information showing the borrower is operating the housing in a non-profit manner.
- 3. The National Office noted during the file review and the site visits that several borrowers did not have an executed lease agreement or an employment contract with the farm labor worker. In accordance with 7 CFR 3560 Subpart M; Section 3560.623 (b) Housing Management and Operations, it is the responsibility of the borrower to maintain a lease or employment contract with each tenant specifying employment with the borrower as a condition for continued occupancy.
- 4. The National Office noted during the site visit there were units being occupied by persons not engaged in primary production of agricultural commodities. The regulation stipulates that farm labor occupants must meet the definition of a domestic farm laborer, as defined in 7 CFR 3560; Section 3560.11. However, 7 CFR 3560, Subpart M, 3560.624 (d) allows with prior written permission of the Agency, an On-FLH may be occupied by ineligible tenants on a short-term basis.
- 5. During the site visits, it was noted that in some cases deferred maintenance of the housing exists. It remains essential that borrowers continue to maintain properties in an acceptable condition as required by the Agency regulation, 7 CFR 3560, Section 3560.625 Maintaining the Physical Asset, along with meeting state and local building and occupancy codes.



#### United States Department of Agriculture Rural Development

March 10, 2009

Page 2

Attached is a copy of 7 CFR 3560, Subpart M "On-Farm Labor Housing," for your reference.

Please review your operations and make sure that you have implemented these items noted above. Should you have any questions regarding any of the findings, please contact your local Rural Development Servicing Office.

Sincerely,

(Signed by James C. Alsop)

James C. Alsop Acting Administrator Rural Housing and Community Facilities Programs

Attachment

1400 Independence Ave. SW . Washington, DC 20250-0700 Web: http://www.rurdev.usda.gov

Committed to the future of rural communities.

SUBJECT: Freedom of Information Act Requests Related to the American Recovery and

Reinvestment Act of 2009

TO: National Office Officials

**Rural Development State Directors** 

ATTN: Administrative Program Directors

Freedom of Information Act/Privacy Act Coordinators

**Public Information Coordinators** 

FROM: Clyde Thompson /s/ Clyde Thompson

Deputy Administrator

Operations and Management

The purpose of this memorandum is to establish a procedure for the handling of all Freedom of Information Act (FOIA) requests for information related to the American Recovery and Reinvestment Act of 2009 (ARRA).

When a State Office receives a FOIA request for ARRA related information, the FOIA request, response letter, and all responsive information must be cleared through the Rural Development FOIA Unit prior to providing a response to the requester. The attached acknowledgement letter is to be sent to the requester. The acknowledgement letter must not be modified to include any additional comments. The Rural Development FOIA Unit will handle all processing of FOIA requests received by the National Office. Please forward any FOIA requests that are received as expeditiously as possible to the Rural Development FOIA Officer at FOIA@wdc.usda.gov.

If you have any questions, please contact one of the FOIA/Privacy Act (PA) staff: Nona Jones, Rural Development FOIA/PA Officer at (202) 692-0004, or Karla Timmons, Rural Development FOIA/PA Assistant at (202) 692-0015. You may also e-mail the FOIA/PA Unit's mailbox at FOIA@wdc.usda.gov.

Attachment

EXPIRATION DATE:

FILING INSTRUCTIONS: Administrative/Other Programs

March 31, 2010

Sent by electronic mail on <u>3/5/09</u> at <u>9:30 a.m.</u> by the Support Services Division. National Office Officials and State Directors should distribute to other personnel as appropriate.

### State Office Letterhead

Attachment

# < Enter Date Signed>

<Enter Name of Requester>

<Enter Requester's Street Address>

<Enter Requester's City, State Zip Code>

FOIA Request No. < Enter FOIA Request No.>

Dear Mr./Ms. **<Enter Requester's Name>**:

This letter is being sent to acknowledge receipt of your Freedom of Information Act (FOIA) request, dated **<enter date of the FOIA request>**, that was received in this office on **<enter date the FOIA request was received by your office>**. You are requesting information about the American Recovery and Reinvestment Act.

To check on the status of your request, you may contact me at <(enter area code)> <enter phone number>. Please reference this request by the assigned FOIA number.

Sincerely,

< Enter Name of FOIA Coordinator>
Freedom of Information Act Coordinator

SUBJECT: Employee Responsibilities and Conduct

TO: All Rural Development Employees

FROM: Clyde Thompson /s/ Clyde Thompson

Deputy Administrator

Operations and Management

Rural Development has issued RD Instruction 2063-H, Employee Responsibilities and Conduct. This directive sets forth Rural Development's policies and procedures on ethics and conduct. This information may be accessed at <a href="http://www.rurdev.usda.gov/regs/pdf/2063h.pdf">http://www.rurdev.usda.gov/regs/pdf/2063h.pdf</a>.

Supervisors are reminded employees will be responsible for completing item #17 on page one of the performance appraisal acknowledging they have received a copy of United States Department of Agriculture and agency regulations on employee responsibilities and conduct. Please ensure all your employees receive either a copy or the link to this Instruction since they will be responsible for adhering to the policy.

If you have additional questions, please contact your servicing human resources office.

EXPIRATION DATE:

March 31, 2010

FILING INSTRUCTIONS: Administrative/Other Programs

Sent by electronic mail on <u>03/10/09</u>, at <u>12:30 p.m.</u>, by Human Resources.

SUBJECT: Mid-Year Performance Reviews

TO: Rural Development Employees

FROM: Clyde Thompson /s/ Clyde Thompson

Deputy Administrator

Operations and Management

We are approaching the mid-point of the 2009 performance year, and soon you will be meeting with your supervisor to discuss your formal progress review. As employees, it is crucial that you participate in discussions with your rating officials concerning your performance goals throughout the performance year; have a clear understanding of performance expectations and how they relate to your organization's mission; perform at your full potential; support team endeavors and continue your professional development; identify work problems and work with your rating official to resolve them; and try to improve performance by seeking feedback from your internal/external customers, coworkers, and rating official. As part of Rural Development's commitment to supporting employees in meeting and exceeding performance goals, we have prepared an attachment that provides guidelines in developing meaningful performance goals:

- Developing and setting performance goals (elements and standards)
- Measuring performance
- Building clarity in performance goals
- Setting year long performance goals, and
- Self evaluation in making progress toward your performance goals

We want to ensure that you understand the importance of playing an active role in managing your performance, and realize the value of accomplishing your individual career goals.

If you have any questions regarding this memorandum, please contact your servicing human resources office.

Attachment

EXPIRATION DATE: March 31, 2010

FILING INSTRUCTIONS: Administrative/Other Programs

# <u>Developing performance goals (elements and standards):</u>

In order for performance goals to be effective, they must be relevant, measurable, clearly written and understood, and specific, with starting and ending points. Performance goals help us to remain focused on the challenges and opportunities of our position. It helps to set performance goals in the following format.

- Statement: clear statements of what you will accomplish during the performance year should be directly related to your responsibilities, "review contracts."
- Objective: agree on the objective to support the goal, "I will reduce the time it takes to review a contract by two working days."
- Time: the objective statement should include a statement of the amount of time to reach the goal, "I will reach the goal *by the end of the next fiscal quarter*."
- Format: the format of every goal should follow similar construction. A single sentence is the best, "I will reduce the number of errors in contracts by 70 percent within the next fiscal quarter."

### Building clarity into your performance goals:

- Relationship: goals should have a clear relationship with your job responsibilities, e.g., if you are a programmer, a goal that you "will improve your negotiation skills" lacks relevance, and therefore clarity.
- Importance: should focus on something important to you and the organization. If you are a marketing specialist, a goal that pertains to "keeping the break room clean" is not important to you.
- Duration: to maintain clarity, the goal must have a specific beginning and end. The beginning is typically the point at which you set the goal, and the end coincides usually with the annual appraisal.

Set meaningful, year-long performance goals by reflecting on the proposed goals and think about how they might be improved. You should meet with your supervisor to review job responsibilities, develop draft goals, consider any changes, and meet again to set final goals. It is important to develop clearly focused goals by discussing them with your supervisor. For example, unclear performance goals may just focus on your job, "process loans" or "market RD programs." Discuss the challenges and opportunities you may face during the performance year regarding these duties with your supervisor in order to set some genuine performance goals, "process 5-10 loans by the second quarter which contributes to the overall goal of 20 loans," "market RD's broadbanding initiative to local farmers in Des Moines, Iowa during crop season."

### Making performance goals active involves:

- Allowing your goals to drive aspects of your performance so they become an active part of your career:
- Identifying professional development activities to support performance goals; increase the level and quality of conversation between you and your supervisor to focus on your performance; and
- Mentoring and learning from your colleagues as part of your performance goals.

# Measuring performance goals:

Goals become nearly worthless if you cannot evaluate whether or not you have reached them. The way you and your supervisor measure your progress toward achieving your goals is very important. Identifying strategies to measure your progress is important. Here are three simple strategies that you can use throughout the year to confirm your progress toward meeting your performance goals:

- Use **rating scales** to measure performance by first describing a task that is part of your job and then rate how well you perform that task on the scale.
- Create **checklists** to show how you have completed steps in a task. List the steps and check them off as you complete them.
- Keep a journal of day-to-day activities. Restate the performance goals and write down narrative
  descriptions that you engaged in to increase your performance and move closer to achieving your
  goals.

Performance expectations (elements) are built around your job description; this is where your performance can make a difference. Concentrate first on those attributes of your job that are identified as expectations, e.g., customer service, improving communications skills with customers. Your supervisor will notice that you are meeting and exceeding expectations. Routine tasks can be improved on by focusing on the task at hand. You can begin by making simple lists of all tasks performed during the day and highlight those you want to focus on improving.

One very effective measure of performance is how well you complete one task before moving on to the next task ("no loose ends"):

- Checklist: as you complete each task, check it off.
- Narratives: maintaining a journal of activities is useful in establishing your competency at completing tasks—a key indicator of high performance. As you complete them, make note of the process that you used, as well as, the date you finished the work.
- Key contacts: solicit input from other people you work with, colleagues, supervisors, or customers. Ask them for suggestions on how you might better complete the process in the future.

#### Using Self Evaluation will help you reach a higher level of performance:

- Answer "what is my job and what are my goals;"
- Develop a strategy for improving performance; and
- Bring tasks to a logical conclusion.

### Engage in on-going self-evaluation by using these effective strategies:

- Seek feedback from customers and coworkers:
- Create a checklist of routine tasks and focus on how to improve each step;
- Reflect on your performance periodically; and
- Write down effective actions that you have taken.

SUBJECT: Reminder for Mid-Year Performance Reviews

Response Due: May 1, 2009

TO: National Office Officials

**Rural Development State Directors** 

ATTN: Administrative Program Directors

**Human Resources Managers** 

FROM: Clyde Thompson /s/ Van B. Jorstad

Deputy Administrator (Acting)
Operations and Management

Monitoring employee performance includes measuring performance, providing timely feedback throughout the performance year, and completing one formal progress review. Employees who have been under an established performance plan for 90 days or more must have a progress review completed between **March 1 to April 30, 2009**, and should be documented in Section 6 on Form AD-435A, Performance Plan, Progress Review and Appraisal Worksheet, with the signatures of the rating official and employee. A fillable version of Form AD-435A is available at <a href="http://i2i.nfc.usda.gov/Forms/Forms\_home.html">http://i2i.nfc.usda.gov/Forms/Forms\_home.html</a>. Any eligible employee not under an approved performance plan as of October 1, 2008, must be placed on one immediately. Development and employee receipt of the fiscal year (FY) 2009 plan are documented in Section 5 on Form AD-435A.

A formal progress review provides an opportunity to review performance goals with the employee to ensure they are still relevant to his/her position, and communicate other issues such as informal/formal training needs to improve skills and knowledge level, status of work, delegation of assignments, and changes in organizational goals or priorities. Any significant

EXPIRATION DATE: March 31, 2010

FILING INSTRUCTIONS: Administrative/Other Programs

changes in an employee's duties, responsibilities, or work assignments should be reflected accurately within the critical elements of the position. If revisions to the performance plan are required, implementation must be completed within 30 days of the action. Attachment 1 is a checklist for performance plans that provides you with a quick summary of performance plan requirements. If there are areas of performance that need improvement, inform the employee and discuss solutions that will help him/her to improve performance. Contact your servicing human resources office for any advice and assistance before taking any action.

We recommend a 24 minute video titled, "Light the Fire: Leveraging Appraisals for Maximum Performance" that is available until **October 1, 2009**, on the Leadership Development Channel on AgLearn. This video helps you to:

- understand and practice how to write goals and objectives that are aligned with and support organizational goals,
- provide opportunities to develop and enhance skills in effective communication,
- build motivation, and
- facilitate employees' movement through levels of development performance.

The goal is to emphasize that the true power in managing and appraising performance lies in the on-going feedback, coaching, mentoring, and recognition between the manager and the employee.

To meet our goal of ensuring that we utilize the feedback process to assist employees to reach their performance goals successfully, verification of progress reviews for all eligible employees is required. You must complete Attachment 2 and submit it to your appropriate Human Resources Manager; Chief, Field Services Branch; or Chief, Headquarter Personnel Services Branch by May 1, 2009.

If you have any questions in developing a performance plan or addressing performance problems, please contact your servicing human resources office.

#### Attachment

Sent by electronic mail on March 11, 2009, at 9:05 a.m., by Human Resources. State Directors and National Office Officials should advise other personnel as appropriate.

#### **Checklist for Performance Plans**

<u>Strategic Alignment</u>: At least one element has this addressed and incorporated. Employee performance plans are required to have at least one performance element that shows alignment to Rural Development's mission, strategic goals, program/policy objectives and/or annual performance plan. The element should show a cascaded goal, i.e., from the Senior Executive to Manager to Supervisor to Employees. Alignment of more than one element is possible.

<u>Performance Elements</u>: between 3 and 7 elements, including mandatory elements, at least 1 critical element is linked to Rural Development's Strategic Plan, or the organization's annual performance plan or business plan, or by other means that account for program results, at least 1 critical element is results-focused (e.g., Mission-related), employee spends a SIGNFICANT portion of time performing this duty—it is a significant job component, employee has PRIMARY control over the outcome, employee has FULL authority to perform this, element is DISTINGUISHABLE from other performance elements, a performance element for supervision is incorporated (only for supervisors), a performance element for EEO/CR is incorporated (only for supervisors), and performance requirements include performance accountability (only for supervisors).

<u>Performance Standards (Measures)</u>: each standard includes one or more of the following: qualitative measures, quantitative measures, timeliness measures, cost effectiveness measures, or manner of performance measures, and appear reasonable and provide appropriate distinctions between levels. When writing measurable standards, be sure that the wording is specific, the behavior described is observable, and the "Fully Successful" level is worded in such a way that the employee can exceed the standard. Performance standards should also be described to show above fully successful performance so the employee understands that there are distinctions in levels of performance.

Good measurements for performance standards are:

- Specific and objective—should be clearly written, be free from ambiguities, bias, personal feeling, or opinions, and contain finite measures that specify the line between satisfactory work and less-than-satisfactory work.
- Mission related—the measure should directly link to the required performance of the job.
- Non-discriminatory—the measure should be able to be consistently applied to all personnel in the same or similar position or grade with the same authority. Although the elements may be the same for similar positions, the measure should reflect the grade level of the employee.
- Observable—you must be realistically able to observe and monitor the performance to ascertain the standard has been met.
- Fully Successful level—a fully experienced and competent employee will consistently achieve or meet the performance standards for the job given circumstances within his or her control.

<u>For Employees - does the performance plan include measurable standards for:</u> EEO/CR, Health and Safety, if warranted by the position, and Personally Identifiable Information, if warranted by the position.

<u>For Supervisors – does the performance plan include measurable standards for</u>: employee perspective, customer perspective, Health and Safety, if warranted by the position, and Personally Identifiable Information, if warranted by the position.



#### United States Department of Agriculture Rural Development

March 10, 2009

Attachment 2

Please provide the information as shown below and submit it to your appropriate Human Resources Manager; Chief, Field Services Branch; or Chief, Headquarters Personnel Services Branch by **May 1, 2009**. The appropriate human resources office must complete all Mid-Year Progress Review certification forms and submit to Kimm Slayton via email at Kimm.Slayton@wdc.usda.gov or by FAX at (202) 692-0236.

Employee's Name	Rating Official's Name	Date when Performance Plan was Established	Date of Progress Review Completed	Explanation for Progress Reviews Not Conducted (e.g., new employee, new position, extended sick leave, retirements)
John Doe	George Washington	2/4/2009	Not Eligible	Not eligible because employee entered on duty 02/04/09. Progress review will be completed on 3/30/09.
Mary Smith	George Washington	10/1/08	3/31/09	

Human Resources Manager's Name/Chief, Field Services Branch/Chief, Headquarters Personnel Services Branch Name:	Provide method used to track progress reviews:

TO: State Directors

Rural Development

ATTN: Single Family Housing Program Directors

FROM: James C. Alsop (Signed by James C. Alsop)

**Acting Administrator** 

Housing and Community Facilities Programs

SUBJECT: Repairs Financed with Protective Advances

Protective advances for repairs are too often used when other options are available. Use of these advances unnecessarily may create un-foreseen consequences and be costly to the borrower and the Government. Protective advances should only be used when there is no other alternative to complete repairs that are vital to protect the Government's security interests in a structure.

This letter clarifies when protective advances should be used for repairs, alternatives to consider, and proper procedures for making the advance.

# **BACKGROUND:**

Protective advances are made to pay for costs incurred to protect the security interest of the Government. Typically, advances are made for repairs, to satisfy prior liens, to replenish escrow to pay taxes or insurance premiums, or to pay for local assessments. Advances are Type 60 non-contractual Program Loan Costs and are charged as recoverable costs to the borrower's account.

An advance bears an interest rate the same as the loan to which it is charged. In cases of multiple loans with the same security, the advance is charged to the largest loan. The entire amount of the advance is due with the next scheduled payment. However, Rural Development may schedule repayment consistent with the borrower's ability to pay or reamortize the loan.

EXPIRATION DATE:

FILING INSTRUCTIONS:

March 31, 2009

**Housing Programs** 

Based on a review of protective advances, it was determined:

- The use of advances often creates a delinquent loan and increases the potential for loss by the Government;
- Tracking of protective advances is limited;
- Ordering funds with an advance may cause have significant tax consequences for borrowers;
- Subsequent loans are not always adequately considered in lieu of advances; and,
- Advances sometimes fail to protect the Government, are approved without adequate consideration of a subsequent Section 502 loan or a Section 504 Repair loan/grant, or are for a non-essential repair.

# REQUIREMENTS FOR USE OF ADVANCES FOR REPAIRS

As per 7 CFR Part 3550 § 3550.206 and HB-1-3550, Paragraph 13.15 A. 2., advances for repairs will be made only if the borrower cannot obtain a subsequent loan. Consideration will be given to private credit, including subordination by Rural Development. Processing time, lien position and the effect on the Rural Development loans will be considered. The borrower will not be required to apply for other credit if it is apparent the borrower will not qualify.

In all cases where the borrower is living in the dwelling, the originator shall initially consider in the following order: a Section 502 loan, Section 504 loan, Section 504 grant, or a combination of any of these.

Section 504 loans, which may offer the most favorable payment terms, are processed for current borrowers according to normal rules and eligibility requirements. In many circumstances, a subsequent Section 502 loan may be approved under streamlined processing and less stringent eligibility requirements. These include the following (with HB-1-3550 reference in parenthesis):

- 1. Credit history can be less than normal standards, especially if the payment record on the existing loan has been adequate. The loan approval official may consider making an exception for adverse credit, including an exception for 'Benefit to the Government.' Under this provision, the Administrator can make an exception on delinquent Federal debt (4.14 A.);
- 2. Loans less than \$7,500 with a repayment in 10 years may be secured by a promissory note only so long as the borrower meets certain credit history, repayment and equity requirements (5.12 A.);
- 3. Where a mortgage is required, title clearance and the use of legal services are not necessary for subsequent loans for minimal essential repairs to protect the Government's interest (5.12 B.);
- 4. An appraisal is not required when a subsequent loan is made to protect the Government's interest, regardless of the amount, though the Loan Originator must include a statement of the estimated property value in the case file (5.17);

- 5. If necessary to protect the Government's security interest, a subsequent loan may be made that causes the total indebtedness to exceed the market value of the property and/or the area loan limit. The excess amount cannot exceed the cost of necessary repairs, reasonable closing costs, and allowable excess costs (6.7 C.);
- 6. Subsidy may be granted on a secured subsequent loan with term of less than 25 years if the initial loan had a term of 25 years or more (6.8 B. & 6.11 C. 1.);
- 7. The interest rate of the subsequent loan is the current rate, not the rate of the initial loan (6.9); and,
- 8. The initial loan may be reamortized if the borrower cannot be reasonably expected to meet installment payments (6.16 B. 2). A waiver to exceed payment ratios may be considered, especially for those with sound payment records.

When subsequent Section 502 loans are considered with these favorable requirements and terms, there should be limited instances where a protective advance for repairs would be justified.

In those cases where an advance for a repair is the only alternative, the decision will be reviewed by the State Housing Program Director before approval. The approval official will document that alternative credit has been considered and why it is not feasible; describe the emergency repairs; and, state why the repairs are needed to protect the Government's security interest.

When protective advances for repairs are approved, funds may only be disbursed directly to the supplier or contractor making the repairs. If possible, payment will be made by electronic funds transfer (EFT). It should be noted that protective advances will be reported to the IRS as income to the vendor and an IRS Form 1099 will be generated. In no case should the borrower or Rural Development employee be listed as the vendor. Payment will be made directly to the contractor by EFT or paper check when repairs are completed and the final inspection performed; a supervised bank will not be used.

# **SUMMARY**

Protective advances must be closely monitored to ensure they are provided only for essential repairs to protect the Government's security interest. In no case will advances for repairs be approved until it is determined all other funding possibilities have been considered. The State Director or designee will review all requests of protective advances for repairs prior to approval.

If you have any questions, please contact Donn Appleman at (202) 690-0510.

SUBJECT: Change of Official Station Regulations and Relocations

TO: National Office Officials

**State Directors** 

ATTN: Administrative Program Directors

FROM: Clyde Thompson (Signed by Clyde Thompson)

Deputy Administrator

Operations and Management

The Rural Development Travel Unit (TU) has conducted a review of Rural Development Instruction 2039-A, "Change of Official Station" to ensure it meets the requirements of the Agriculture Travel Regulations. The TU determined that RD Instruction 2039-A is consistent with the travel policy regulations set forth by the United States Department of Agriculture. A copy is available for review at <a href="http://www.rurdev.usda.gov/regs/regs/pdf/2039a.pdf">http://www.rurdev.usda.gov/regs/regs/pdf/2039a.pdf</a>.

Effective April 1, 2009, the National Office Travel Unit will begin handling all relocations for Rural Development in order to provide one source for all relocation needs.

If you have any questions, please contact one of the TU staff: Kelvin Dawson, (202) 692-0229, Julie Railey, (202) 692-0227, or Lisa Washington, (202) 692-0030. You may also e-mail the TU at <a href="mailto:ssd.travel@wdc.usda.gov">ssd.travel@wdc.usda.gov</a>.

EXPIRATION DATE: FILING INSTRUCTIONS:
March 31, 2010 Administrative/Other Programs

Sent by electronic mail at <u>3/19/09</u> on <u>3:00 p.m.</u> by the Support Services Division. National Office Officials and State Directors should advise other personnel as appropriate.

TO: All State Directors

ATTN: Rural Housing Program Directors

FROM: Philip H. Stetson (Signed Phillip H. Stetson)

Acting Deputy Administrator Single Family Housing

SUBJECT: Prior Disbursements for 504 Grants

The purpose of this memorandum is to notify State and Area Office staff of a new enhancement to MortgageServ and UniFi that will provide the capability of reporting prior section 504 grants received by an applicant. This enhancement will aid the field in determining if applicants for section 504 grant assistance are approaching the lifetime limitation of \$7,500.

When a grant is being processed via the 504 worksheet within UniFi, the system will check by grantee Social Security Number and co-grantee Social Security Number. If any grants have been previously provided to the grantee or co-grantee, this amount will be displayed in the "less Prior Grants" field and be deducted from the maximum grant cap; the difference will be displayed in the "504 Grant Amount Available" and "Requested 504 Grant Amt" fields. The "Requested 504 Grant Amt" field will remain available, if the entire amount is not being requested. However, staff must be careful when reviewing this information. If an applicant and co-applicant previously had a grant, the system will display the grant amount for each individual. Staff should be aware of this in order to prevent double counting any previous grants.

This enhancement is scheduled to move into production soon, and instructions will be forthcoming to the DLOS Training. If you have any questions, please contact the Single Family Housing Direct Loan Division at (202) 720-1474.

EXPIRATION DATE: March 30, 2010

FILING INSTRUCTIONS: Housing Programs

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